SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 219

MAPLE ISLAND FARM, INC.,

Petitioner,

vs.

WALTER BITTERLING,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS, EIGHTH CIRCUIT

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Maple Island Farm, Inc., hereby petitions for a writ of certiorari to the Court of Appeals of the Eighth Circuit, to review the decision of that court on the issue of the jurisdiction of the District Court of the District of Minnesota, Third Division, upon which issue the Court of Appeals filed its decision on April 24, 1952, and respectfully shows:

Summary Statement

This action was brought in January, 1949, in the District Court of Minnesota, Third Division, by Walter Bitterling, as plaintiff, against Maple Island Farm, Inc., as defendant,[1]

[1] For uniformity of reference and to avoid confusion, petitioner will be designated herein as defendant and respondent as plaintiff.

to recover upon two alleged oral contracts, under one of which plaintiff claimed commissions on all of defendant's powdered milk products distributed in Mexico through a certain Mexican distributor, and under the other of which plaintiff claimed damages for breach of contract to pay him commissions on all of the defendant's powered milk products exported into Venezuela so long as defendant continued to export into that country.

The case was tried to the District Court without a jury beginning June 5, 1950, and was decided on June 13, 1951. Plaintiff was given judgment for $168,056.39.

Federal jurisdiction was claimed by plaintiff solely upon diversity of citizenship. Defendant is a Minnesota corporation. Plaintiff alleged that he was a citizen of the United States and of the State of Oklahoma. Defendant concedes plaintiff's national citizenship, but put in issue his claim of state citizenship, and opposed the jurisdiction of the Court on the ground that plaintiff was not a citizen of any State, it being defendant's contention that plaintiff failed to sustain his burden of proof on that issue, and that, on the contrary, it conclusively appeared that plaintiff had established a domicile in Caracas, Venezuela, and therefore had lost his citizenship of Oklahoma, if such he ever had. The District Court "found" only that the plaintiff was a citizen of Oklahoma and concluded that it had jurisdiction of the action. The Court, however, made no finding as to any underlying fact upon which state citizenship depends, such as residence, domicile, intention, or the like. In its opinion the District Court commented:

> "The plaintiff is a citizen of Oklahoma, but has devoted about fifteen years to business in Mexico, Venezuela and other South and Central American countries. * * *" (R. 61.)

After denial of its motion for amended findings of fact and conclusions of law and for dismissal or a new trial, defendant took an appeal to the Court of Appeals of the Eighth Circuit. After the case was there docketed defendant moved the Court for hearing and decision on the issue of jurisdiction separately from and in advance of the many other issues in the case. The Court made an order permitting defendant to file a record pertaining to the issue of jurisdiction, together with a motion for dismissal and brief in support of that motion. Defendant filed such a record, motion, and brief, following which the Court made an order directing an advanced and separate presentation of the issue of jurisdiction and permitting plaintiff to file a supplemental record and brief. This was done, and defendant filed a response. (R. 3-25.) The evidence on the issue of jurisdiction, as presented by the special record, consisted entirely of plaintiff's own testimony and certain written documents not questioned by him. There was, therefore, in the Court of Appeals no dispute as to the facts on this issue. The matter was placed on the calendar and orally argued on March 7, 1952. On April 24, 1952, the Court of Appeals filed its decision affirming the conclusion of the District Court that plaintiff was a citizen of Oklahoma and sustaining the jurisdiction. (R. 26-88; 89-97.)

The affirmance resulted from the expressed view of the Court of Appeals that the finding by the District Court that plaintiff was a citizen of Oklahoma was conclusive upon the Court of Appeals unless "clearly erroneous," and that it was unable to hold that finding clearly erroneous. To exercise an independent judgment on the question was considered to be beyond the Court's proper powers of review. (R. 96-97.)

A petition by defendant for rehearing (R. 99-114) was

denied by order filed May 13, 1952. (R. 115.) A further outline of the facts relating to jurisdiction will appear in the accompanying brief.

Basis of Jurisdiction

This Court has jurisdiction to issue the writ applied for under Article 3, Section 2, Clauses 1 and 2, of the Constitution of the United States and under the Act of Congress of June 25, 1948, 62 Stat. 928, 28 U.S.C.A., Section 1254 (1), authorizing this Court to review cases in the courts of Appeal "by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." [2]

Reasons Relied Upon for Allowance of Writ

1. The decision of the Court of Appeals is in conflict with the decisions of other courts of appeal on each of the questions presented.

2. The Court of Appeals has decided a federal question in a way that is in conflict with the applicable decisions of this Court and several Courts of Appeal.

3. The Court of Appeals has rendered an important decision of general interest contrary to law as pronounced by this Court and by other courts of appeal.

Questions Presented

The ultimate question is whether the District Court had jurisdiction upon the ground of diversity of citizenship. This in turn depends upon whether plaintiff was at the commencement of the action a citizen of Oklahoma. The particular questions presented by the decision of the Court of Appeals, the review of which is sought by petitioner, are these:

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[2] The decision of the Court of Appeals is its "judgment" within this statute. *Rogers* v. *Hill*, 289 U.S. 582.

1. In reviewing the "finding" of the District Court in question, was the Court of Appeals so bound by it that its powers of review were exhausted by the conclusion that the finding was not "clearly erroneous," or should the Court with respect to this finding have exercised an independent judgment. This presents the further questions:

(a) Does a naked finding of state *citizenship* present to a court of appeals a question of fact, a conclusion of law, or a mixed question of law and fact.

(b) Does a deduction or inference of state citizenship from undisputed facts present to a court of appeals a question of fact, a conclusion of law, or a mixed question of law and fact.

(c) On mixed question of law and fact what is the scope of review in the courts of appeal.

(d) Is domicile in a state or country to be presumed from residence therein, in the absence of evidence against such presumption.

(e) Does the record on jurisdiction, either with or without the aid of the presumption from residence, require a reversal of the District Court's finding of plaintiff's citizenship of Oklahoma.

Respectfully submitted,

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Doherty, Rumble, Butler & Mitchell,
Of Counsel.

BRIEF

Grounds of Jurisdiction

The basis of jurisdiction is stated in the Petition (p. 4, ante).

Statement of Case

The procedural history, the nature of questions presented, and their evolution are covered by the Summary Statement and Questions Presented (pp. 1 and 5, ante, of Petition).

A very brief general outline of the facts on the issue of jurisdiction, the sole question decided by the Court of Appeals, and on the state citizenship of plaintiff, on which jurisdiction depended, is as follows:

Plaintiff was born in Montana. He attended grade and high schools in Tulsa, Oklahoma, and was there employed during one year. He left Oklahoma in 1934 or 1935, at about the age of thirty years, and went to Venezuela. This was 14 or 15 years before the commencement of the action. Between the date of his birth in Montana and his arrival at age thirty, he had *resided* in North Dakota, South Dakota, Illinois, and Alabama. Upon leaving Oklahoma he spent approximately the next four years in Venezuela. Then followed six years divided between Venezuela, other South American countries, the Caribbean Islands, and Africa, with three relatively short visits to the United States. His trips to the United States during this period were not on account of any business located in this country, but were incidental to his foreign, including Venezuelan, employments. Beginning in 1944, and continuing thereafter, he established himself in business in Caracas and set up a residence and *home* there, which was maintained up to the time of trial (R. 42-50; 54-61).

These facts are sufficient for consideration of all questions presented except the final one, and further factual

details are deferred to the discussion of that question, in the interest of clarity.

Summary of Argument

The District Court's conclusion as to its jurisdiction upon the ground of diversity rested upon its so-called "finding" that "Plaintiff is a citizen of the State of Oklahoma and of the United States of America." National citizenship being admitted, only the Oklahoma state citizenship of plaintiff was in question. The District Court's determination of that question was presented for review to the Court of Appeals upon a record of undisputed evidence.

The Court of Appeals erred and placed itself in conflict with other courts of appeal by holding that it was bound by the bare "finding" by the District Court of plaintiff's state citizenship unless that finding was seen to be "clearly erroneous." This "finding" was not binding on the Court of Appeals, and an independent judgment on the question should have been exercised because (a) the conclusion of the District Court as to plaintiff's state citizenship was not rested upon any finding of supporting facts; (b) the controlling facts were undisputed; (c) the question presented to the Court of Appeals was either one of law or a compound of law and fact. The Court of Appeals further erred and created a conflict in failing to recognize or apply the presumption of plaintiff's domicile from plaintiff's residence in Venezuela. There was no evidence tending to overcome this presumption, and therefore, by reason of the presumption, and under all the facts, plaintiff's domicile in Caracas was conclusively established. This terminated his citizenship of Oklahoma, if he ever was a citizen of that State, and left no basis for jurisdiction of the District Court.

Argument and Authorities

State Citizenship Essential to Diversity

Plaintiff's conceded national citizenship does not imply citizenship of any State. While one may not be a citizen of a State unless he be a citizen of the United States, the reverse is not true. By establishing a foreign domicile, and nothing more, a citizen of the United States and of a State loses his state citizenship while retaining his national citizenship. *Slaughter-House Cases,* 16 Wall. 36, 21 Law. Ed. 394; *Hammerstein* v. *Lyne,* (D.C. Mo.) 200 F. 165; *Alla* v. *Kornfeld,* (D.C. Ill.) 84 F. Supp. 823; *Pannill* v. *Roanoke Times Co.,* (D.C. Va.) 252 F. 910; *Prentiss* v. *Brennan,* (C.C. N.Y.) 19 Fed. Cases 1278, No. 11,385; *Cooper* v. *Galbraith,* (C.C. Pa.) 6 Fed. Cases 472, No. 3193.

The basic test of State citizenship is prescribed by the Fourteenth Amendment, Sec. 1, Clause One, which reads:

> "All persons born or naturalized within the United States and subject to the jurisdiction thereof, are citizens of the United States *and of the state wherein they reside.*"

Burden of Proof

The burden of proving all jurisdictional facts was upon the plaintiff. *Kurn, et al.* v. *Beasley,* 8 Cir., 109 Fed. 2d 687; *Mulligan* v. *Federal Land Bank,* 8 Cir., 129 Fed. 2d, 438; *Le Mieux Bros., Inc.* v. *Tremont Lbr. Co.,* 5 Cir., 140 Fed. 2d 387, 389; *Badger* v. *Reich Bros. Const. Co.,* 5 Cir., 161 Fed. 2d, 289; *Mitchell* v. *Maurer,* 293 U. S. 237, 244; *McNutt* v. *General Motors Acceptance Corporation,* 298 U. S. 178; *Thomson, Trustee* v. *Gaskill,* 315 U. S. 442.

Upon the plaintiff, therefore, rested the burden of proving "residence" in a State within the meaning of the constitutional provision above quoted.

Decision of the District Court

Under the caption "findings of fact" the District Court declared "Plaintiff is a citizen of the State of Oklahoma and of the United States of America," and under the caption "conclusions of law" is the stated conclusion "The court has jurisdiction of the parties and of the subject matter of this action." In its opinion the Court said: "The plaintiff is a citizen of Oklahoma, but has devoted about fifteen years to business in Mexico, Venezuela and other South and Central American countries" (R. 61-62).

This is all that is to be found in the Court's findings of fact, conclusions of law, or opinion on the subject of the plaintiff's challenged state citizenship and of jurisdiction. There was no finding of any "primary, evidentiary or circumstantial facts" such as referred to by this Court in *Bogardus* v. *Commissioner*, 302 U. S. 34, 39, as distinguishing findings of fact from conclusions of law or determinations of mixed questions of law and fact. Thus there was no finding as to plaintiff's residence, domicile, home, intention, or the like.

Decision of the Court of Appeals

The Court of Appeals considered itself bound by the quoted "finding" of the District Court that plaintiff was a *citizen* of Oklahoma. Referring to domicile the Court said:

> "The question of domicile is a mixed question of law and fact, but mainly one of fact. Philadelphia & Reading Ry. Co. v. Sherman, 2 Cir., 230 Fed. 814."[3]

But then added:

> "The determination of the *fact* is * * * by the court if tried by the court, and such determination is conclusive unless clearly erroneous."

[3] This decision does not deal with the subject of domicile or citizenship.

Here the Court said in effect that a finding of domicile could not be reversed unless clearly erroneous. The Court then applied the same rule to a finding of citizenship. It said:

> "Were we the triers of the *fact* in the first instance we might have concluded that he had lost his citizenship in Oklahoma,[4] * * * We cannot upon this record, however, hold that the Court's finding is clearly erroneous. *Accordingly* the finding of the Court that the plaintiff was and is a citizen of Oklahoma is affirmed" (R. 97).

From this it is apparent that the Court's decision rested upon the theory that the District Court's conclusion as to plaintiff's state citizenship was a finding of fact binding upon the Court of Appeals unless clearly erroneous, and that there was no authority in the Court to exercise an independent judgment on the question.

A Finding of Domicile or Citizenship is a Compound of Law and Fact

Domicile and a fortiori state citizenship are mixed questions of law and fact. *Sweeney* v. *District of Columbia* (C.A. D.C.) 113 Fed. 2d 25; *Shilkret* v. *Helvering*, (C.A. D.C.) 138 Fed. 2d 925; *New York Trust Co.* v. *Riley*, 24 Del. Ch. 354, 16 A. 2d 772, 783, affirmed 315 U. S. 343.[5]

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[4] The Court's comment that "we might have found that he was domiciled in New York where he lived from November 1947 to February 25, 1948, as vice president of International Trade Service" was evidently inadvertent, since plaintiff made no claim that he ever had a legal residence or domicile in New York or that he was ever a citizen of that state, and there was no such issue in the case.

[5] The decisions of the district courts and of the appellate courts of the States are in accord with this rule. *Hicks* v. *Hicks*, (D.C.) 80 Fed. Supp. 219; *Taylor* v. *Milam*, (Ark.) 89 Fed. Supp. 880; *Hartzler* v. *Radeka*, 265 Mich. 451, 251 N.W. 554; *State* v. *Brazda*, 141 Neb. 817, 5 N.W. 2d 206; *In re Trowbridge Estate*, 266 N.Y. 283, 194 N.E. 756; *Ex Parte Altman*, 237 Ala. 642, 188 So. 685; *Holmes* v. *Holmes*, 212 Ala. 597, 103 So. 884; *Macqueen* v. *Macqueen*, 131 Fla. 448, 179 So. 725; *Talley* v. *Commonwealth*, 127 Va. 516, 103 S.E. 612; *In re Weed's Estate*, 120 Cal. 634, 53 Pac. 30.

Ascertainment of state citizenship involves application to the facts of Section 1 of the Fourteenth Amendment and the decisions construing it. In a case like the present, where the facts are undisputed, the determination of state citizenship becomes a conclusion of law.[6] Assuredly, it is not solely a question of fact.

Review of Mixed Questions of Law and Fact

A district court's conclusion on a mixed question of law and fact is open to review in the courts of appeal in the exercise of an independent judgment. *First National Bank* v. *Hartford*, 273 U. S. 548, 552; *Helvering, Commissioner* v. *Tex-Penn Oil Co.*, 300 U. S. 481, 490; *Bogardus* v. *Commissioner*, 302 U. S. 34, 38; *Helvering* v. *Coal Co.*, 4 Cir., 95 Fed. 2d 732; *Commissioner* v. *Wilson*, 7 Cir., 125 Fed. 2d 307; *Commissioner* v. *Fiske's Estate*, 7 Cir., 128 Fed. 2d 487, certiorari denied, 317 U. S. 635; *Ross* v. *Commissioner*, 5 Cir., 129 F. 2d 310; *Thornley* v. *Commissioners*, 3 Cir., 147 Fed. 2d 416.

The decision of the Court of Appeals in this case is in conflict with this rule and with the cited decisions establishing and applying it.

District Courts' Inferences from Undisputed Facts Are Not Binding on Courts of Appeal

The only evidence on the question of plaintiff's state citizenship is the uncontroverted testimony of plaintiff himself and written documents not questioned by plaintiff. Defendant rested its case on jurisdiction solely on that evidence. There was no controversy as to weight of testimony, credibility of evidence or veracity of witnesses. In-

[6] See *Hartzler* v. *Radeka*, 265 Mich. 451, 251 N.W. 554, in which the Supreme Court of Michigan applied this rule to a determination of domicile, saying: "The question of domicile, when the facts are settled, is one of law."

ferences drawn or findings made from such evidence by district courts are not binding upon courts of appeal, but are there subject to full review and the exercise of independent judgment. Such is the holding of many of the circuit courts. *Kuhn* v. *Princess Lida*, 3 Cir., 119 Fed. 2d 704; *Himmel Bros.* v. *Serrick Corporation*, 7 Cir., 122 Fed. 2d 740; *Equitable Life Assurance Society* v. *Irelan*, 9 Cir., 123 Fed. 2d 462; *Fleming* v. *Palmer*, 1 Cir., 123 Fed. 2d, 749, certiorari denied, 316 U. S. 662; *Smith* v. *Royal Insurance Co.*, 9 Cir., 125 Fed. 2d 222, certiorari denied, 316 U. S. 695; *Wigginton* v. *Order of United Commercial Travelers*, 7 Cir., 126 Fed. 2d 659, certiorari denied, 317 U. S. 636.

In refusing to recognize and apply that principle, the Court of Appeals in this case rendered a decision in conflict with the cited decisions from other circuit courts.

Residence Is Prima Facie Evidence of Domicile

As will appear from the discussion of the topic immediately following (under the caption "Plaintiff was not a Citizen of Oklahoma"), it conclusively appears from the record that for many years prior to, and at the commencement of this action, plaintiff's sole place of residence was Caracas, Venezuela. The presumption from this is that Caracas was his place of domicile in the absence of evidence to the contrary. There was no contrary or qualifying evidence, hence the presumption was conclusive. *Granite Trading Corporation* v. *Harris*, 4 Cir., 80 Fed. 2d 174; *Helvering* v. *Campbell*, 4 Cir., 139 Fed. 2d 865; *Rogers* v. *Rogers*, (C.A. D.C.) 130 Fed. 2d 905; *E. I. Dupont de Nemours & Co.* v. *Byrnes*, 2 Cir., 101 Fed. 2d 14; *Ennis, Admr.* v. *Smith, et al*, 14 How. 400, 14 L. Ed. 472, *Anderson* v. *Watt*, 138 U. S. 694, 706; *The Venus*, 12 U. S. 253, 8 Cranch. 253, 3 L. Ed. 553; *Texas* v. *Florida*, 306 U. S. 398; *District of Columbia* v. *Murphy*, 314 U. S. 441.

Although this presumption was strongly urged on the Court of Appeals, the Court failed to apply it and arrived at a decision inconsistent with it, thus creating a conflict between it and other courts of appeal. Disregard of this presumption had the effect of shifting the burden of proof on domicile from plaintiff to defendant. The Court erroneously imposed on defendant the burden of proof regarding plaintiff's intention to remain in Venezuela. It said (R. 97):

> "He was not asked and did not say as a witness that he intended to remain in Venezuela either indefinitely or permanently. His intention must be deduced, therefore, from all the circumstances in evidence."

This not only was a negation of the presumption of domicile from residence, but also involves a misconception of the intent which is taken as evidence of a change of domicile. It was not a question of whether plaintiff intended to remain in Venezuela. It was a question of whether he had a fixed and definite intention of returning to Oklahoma. *Rogers* v. *Rogers*, (C.A. D.C.) 130 Fed. 2d 905; *District of Columbia* v. *Murphy*, 314 U. S. 441. Or at least had a fixed and definite intent *not to remain* in Venezuela. *Williamson* v. *Osenton*, 232 U. S. 619. The burden in this respect was on plaintiff.

Plaintiff Was Not a Citizen of Oklahoma

Development of this point requires some further outline of the facts appearing from the record on jurisdiction, particularly in relation to the five years immediately preceding the commencement of the action.

Prior to the year 1944 plaintiff's activities in Venezuela and elsewhere were as an employee of others. In that year he began, and continued thereafter, to establish and maintain himself in business in Venezuela on a proprietary

basis. He became president of a Venezuelan corporation organized by himself and an associate to act as representative in Venezuela of foreign manufacturers. He acquired a partnership interest in another old established Venezuelan corporation. In 1946 he helped organize and became president of a corporation to act as distributor in Venezuela for defendant's powdered milk products. The headquarters of all these corporations was at Caracas. In April, 1947, he organized a Venezuelan corporation "to import, distribute and service moving picture equipment, sound equipment of all kinds, interoffice and short wave communication equipment, a line of domestic radios, records, cameras, electronic equipment, and any other line that will lend itself to our activities in the Venezuelan market." (R. 44; 46-49; 55-56.)

In 1948 he projected many business enterprises in which he proposed to engage or participate in Venezuela, as appears from his and defendant's exhibits (R. 53—). He made income tax returns in Venezuela (R. 52-53), and July 20, 1948 wrote: "For income tax purposes I am going to incorporate my name and set up books here in Venezuela." (R. 57.)

He testified that as early as 1944 he made his *home* in Caracas. In his testimony he referred six different times to Venezuela as his *home*. In 1946 he and a brother and two sisters were together making their home in an apartment in Caracas. This was the situation at the time of the trial. He expressly testified that he then maintained a *home* in Venezuela. (R. 44-45; 47-48.) In a response to a pretrial interrogatory, affirmed upon the trial, he said, "Plaintiff's place of residence is Caracas, Venezuela. Plaintiff's last state of permanent residence in the United States, Oklahoma." (R. 51.) He married in New York in June, 1946, respecting which he testified:

> "In 1946, on June 14, I was married. My wife accompanied me to Venezuela to take up legal residence and we arrived there on August 3, 1946."

In 1948 he procured a divorce from his wife in Caracas in an action in which she did not appear. (R. 50-51.)

There is much other evidence in the record tending to demonstrate the permanence of plaintiff's attachment to Venezuela and the permanence of his residence at Caracas.[7] In his brief on jurisdiction filed in the Court of Appeals, plaintiff admitted residence in Caracas "for about eleven months preceding this action." This would include the months of March, 1948 to January, 1949, both inclusive.

Plaintiff's repeated admission that Caracas was his *home*, as well as the site of his residence, definitely places his domicile there. The words "domicile" and "home" are virtually synonymous. *Texas* v. *Florida*, 306 U. S. 398; *Gallagher* v. *Philadelphia Transportation Co.*, 3 Cir., 185 Fed. 2d 543; Restatement Conflict of Laws, Secs. 9, 12, 15, 19, 20. Many State appellate courts have so declared.[8]

Negatively, there is not only a complete absence of any evidence that plaintiff had the remotest intention of ever returning to Oklahoma, but also the record is equally barren

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[7] Plaintiff's concept of the nature of his abode in Caracas appears from numerous excerpts from his testimony. For illustration, when asked, "How does the cost of living in Venezuela compare with the cost of living in the United States," his answer was, "I don't have very much experience with the cost of living in the States, other than as a *travelling man*, which is quite expensive. In Venezuela I maintain a *home*." (R. 45.) When asked the extent of his contacts with field operation of the oil companies in Venezuela, he answered, "Over a period of approximately 15 or 16 years with certain *interruptions* due to *absences* from Venezuela," (R. 49.) Venezuela was primary; absences were interruptions. Respecting his 1948 employment to represent defendant in Venezuela, plaintiff testified, "It was in my mind that we would be selling powdered milk for many years." (R. 49.)

[8] *In re Schultz Estate*, 316 Ill. App. 540, 45 N.E. 2d 577; *Zimmerman* v. *Zimmerman*, 175 Ore. 585, 155 P. 2d 293; *Slater* v. *Monroe*, 313 Mass. 538, 48 N.E. 2d 149, *In re Coppock's Estate*, 72 Mont. 431, 234 P. 258.

of the slightest evidence of any fact or circumstance which might supply a motive or inducement to return to that State. There is no evidence that since his departure from Oklahoma in 1934 or 1935 plaintiff had any business or social interest in that State, or had any place of residence, property, relatives or friends there, or that he ever voted or paid a tax or exercised any of the privileges or discharged any of the duties of citizenship there or ever intended to. There is not a particle of evidence in any way tending to negative plaintiff's abandonment of domicile in Oklahoma (if he ever had one there) by his departure therefrom and the admitted establishment by him of a residence in Caracas, Venezuela. In this state of the record, and irrespective of the presumption of domicile from residence, the only justifiable conclusion is that at the commencement of the action plaintiff was without domicile or citizenship in Oklahoma and that the District Court was without jurisdiction of the action.

Petitioner therefore prays the issuance of a Writ of Certiorari to the Court of Appeals of the Eighth Circuit.

1. To resolve the conflict between the decision of that Court in this case and the decisions of other courts of appeal by a determination that

(a) A "finding" which consists only of inferences or deductions from undisputed facts is in reality a conclusion of law.

(b) State citizenship depends upon a compound of law and fact.

(c) A "finding" of state citizenship from undisputed facts is in effect a conclusion of law.

(d) A district court's naked "finding" of state citizenship is open to review in the courts of appeal in the exercise of an independent judgment, especially where the facts are undisputed.

(e) Residence in a state or country is *prima facie* evidence of domicile therein and becomes conclusive of such domicile in the absence of evidence sufficient to overcome the presumption.

2. To review the question of whether the record of undisputed evidence in this case is sufficient to sustain the jurisdiction of the District Court or whether, on the contrary, it reveals the lack of such jurisdiction.

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